



UNITED STATES MARINE CORPS  
COMMANDING GENERAL  
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MARINE CORPS AIR GROUND COMBAT CENTER  
TWENTYNINE PALMS, CALIFORNIA 92278-8100

CCO 1640.4C  
17-105  
APR 19 1999

COMBAT CENTER ORDER 1640.4C

From: Commanding General

To: Distribution List

Subj: SEARCH AND SEIZURE

Ret: (a) Manual for Courts-Martial (1998 edition)  
(b) U.S. Navy Regulations (1990)

End: (1) REQUEST/AFFIDAVIT FOR COMMAND AUTHORIZATION FOR  
SEARCH AND/OR SEIZURE  
(2) COMMAND AUTHORIZATION FOR SEARCH AND/OR SEIZURE  
(3) PERMISSIVE AUTHORIZATION FOR SEARCH AND/OR SEIZURE

1. Purpose. To establish guidelines, in accordance with the references, for members of this Command to authorize searches for and seizures of evidence for use in a trial by court-martial.

2. Cancellation. CCO 1640.4B.

3. Summary of Revision. This revision contains a substantial number of changes and must be completely reviewed.

4. Information

a. Persons Who May Search for and Seize Evidence. Any commissioned officer, warrant officer, petty officer, noncommissioned officer, and, when performing police duties, any criminal investigator, member of the military police, or person designated by proper authority to perform guard or police duties, or any agent of any such person, may conduct a search and/or seize evidence when a search authorization has been granted or without authorization under those limited circumstances discussed later in this Order.

b. Inspections and Inventories Distinguished from Searches

(1) Inspections. An "inspection" is an examination conducted as a responsibility of command to determine and ensure the security, military fitness, or good order and discipline of the unit, organization, installation, or vehicle. Inspections may examine the

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whale or part of a unit, organization, installation, or vehicle. Inspections may include, but are not limited to, examinations conducted at entrance and exit points, or examinations to determine and ensure that any of the following requirements are met: that the Command is properly equipped, functioning properly, maintaining proper standards of readiness, sea or air worthiness, sanitation and cleanliness, and that personnel are present, fit, and ready for duty. An inspection also includes an examination to locate and confiscate unlawful weapons and other contraband. An order to produce body fluids, such as urine, is permissible. An examination made for the primary purpose of obtaining evidence for use in a trial by court-martial or in other disciplinary proceedings is not an inspection. A previously unscheduled examination to locate weapons or contraband that is directed immediately following a report of a specific offense and examines specific selected individuals; or, subjects persons to substantially different intrusions during the same examination, is not an inspection. Inspections shall be conducted in a reasonable fashion and comply with the special rules governing body views and intrusions. Inspections may utilize any reasonable natural or technological aid and may be conducted with or without notice to those inspected. Unlawful weapons, contraband, or other evidence of crime discovered during an inspection may be seized.

(2) Searches. A search is a command action for the primary purpose of obtaining evidence to be used at a court-martial, nonjudicial punishment, or administrative proceeding.

#### 5. Searches and Seizures Requiring Probable Cause

a. Probable Cause. Probable cause to search exists when there is a reasonable belief, based on facts, that the person, property, or evidence sought is located in the place or on the person to be searched.

#### b. Probable Cause Searches and Seizures Requiring

#### Authorization

#### (1) Authorization to Search

(a) Search Authorization. A search authorization is an express authorization, written or oral, to search a person or an area for specified property or evidence or for a specific person and to seize such property, evidence, or person.

(b) Persons Who May Issue a Search Authorization. The power to authorize a search or a seizure, based upon probable cause, is held by the commanding officer or functional successor in command, who has control over the person to be searched or the place where the property or person to be searched is situated or found. If the commanding officer is absent, the officer who succeeds to command may authorize a search or seizure. Questions pertaining to search or seizure authorization power should be directed to the Staff Judge Advocate. In circumstances where the Commanding General is the appropriate commander to authorize a search and he is unavailable, the Chief of Staff, MCAGCC, when succeeding to command, will be the authorizing officer. A commanding officer is disqualified from authorizing a search if he personally and actively participates in the search. A commanding officer may authorize the search of a civilian. Such a search will be conducted by a member of the Office of the Provost Marshal. Items seized and any civilians apprehended will be released to proper civilian authorities, if appropriate, after contact with the Office of the Staff Judge Advocate.

(2) Basis for a Search Authorization. A search authorization must be based upon probable cause. Probable cause must be based upon facts and not merely the conclusions and opinions of investigators or any other person who may be seeking authorization to conduct a search. The following procedures will be followed in obtaining a search authorization:

(a) Before applying for a search authorization, the person making application should, when possible, seek the advice of any trial counsel, the Military Justice Officer, the Deputy Staff Judge Advocate, or the Staff Judge Advocate (during non-working hours, follow the procedures found in paragraph 9 of this Order). The applicant should, when possible, set forth the facts to be used by the authorizing officer in making the probable cause determination in the Request for Command Authorization to Conduct Search and/or Seizure, enclosure (1)

(b) The facts are then presented to the appropriate authorizing officer so the officer can make a probable cause determination. These facts may include hearsay evidence in whole or in part. Oral statements communicated to the authorizing officer in person, via telephone, or by other appropriate means of communication, or such information as may be known by the authorizing officer that would not preclude the officer from acting in an impartial fashion may also be considered when appropriate.

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In making the probable cause determination, the authorizing officer is simply to make a practical, common-sense determination whether there is a reasonable belief that the person, property, or items sought will be found in the specified location. If the Commanding Officer determines probable cause exists, the Commanding Officer should issue an authorization. The authorization may be verbal or written. If practicable, the decision should be documented in the Command Authorization for Search and/or Seizure, enclosure (2)

(3) Scope of Authorization. The authorizing officer can authorize a search only if the officer has control over the person or area to be searched. In the case of the enlisted barracks, this control may be concurrent, i.e., both the unit commander and the Commanding General, MCAGCC, have control over the barracks building.

c. Probable Cause Searches and Seizures Not Requiring Authorization. Provided probable cause exists, a search or seizure authorization is not required under the following circumstances:

(1) Exigencies. A search authorization is not required for a search based on probable cause when:

(a) Insufficient Time. There is a reasonable belief that the property or evidence will be destroyed, concealed, or removed during the delay necessary to obtain a search authorization.

(b) Lack of Communications. There is a reasonable military operational necessity that is reasonably believed to prohibit or prevent communication with an authorizing officer and there is a reasonable belief that the property or evidence will be destroyed, concealed, or removed during the delay necessary to obtain a search authorization.

(c) Search of Operable Vehicle. An operable vehicle, that is, a vehicle that a reasonable person would know at the time of the search was functional for purposes of transportation, may be searched unless the vehicle can be secured so a search authorization can be obtained.

(2) Plain View. If personnel are lawfully in a position from which they view an object, if its incriminating character is immediately apparent, and if the personnel have a lawful right of access to the object, they may seize it without a warrant.

If, however, the personnel lack probable cause to believe that an object in plain view is contraband without conducting some further search of the object — that is, if its incriminating character is not immediately apparent — the plain-view doctrine cannot justify its seizure.

6. Searches and Seizures Not Requiring Probable Cause

a. Inspections. As discussed in paragraph 5, an inspection is not a search. Therefore, persons authorized to conduct inspections need not have probable cause to inspect. So long as the purpose of the inspection is appropriate under paragraph 5, and not primarily for the purpose of obtaining evidence, a person conducting an inspection can lawfully seize contraband or evidence of a crime discovered during a proper inspection. Probable cause would not be required to seize such items in that case.

b. Searches of Government Property. Government property may be searched unless the property is issued or assigned to a person and that person has a reasonable expectation of privacy therein at the time of the search. Under normal circumstances, a person does not have a reasonable expectation of privacy in Government property that is not issued for personal use. Wall or floor lockers in living quarters issued for the purpose of storing personal possessions normally are issued for personal use; but the determination as to whether a person has a reasonable expectation of privacy in Government property issued for personal use depends on the facts and circumstances at the time of the search.

c. Consent Searches. Searches may be conducted of any person or property with lawful consent of that person or the person in control of the property. The consent must be freely and voluntarily given. The following guidelines will be adhered to:

(1) whenever possible, do not apprehend the person prior to requesting consent;

(2) Do not use coercion, duress, inducement, and do not use authority, rank, or position in requesting consent;

(3) In cases where a search authorization has already been obtained, do not inform the person of that fact until after it has been determined that the person is unwilling to consent:

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(4) Do not tell the person that a search will be conducted regardless of consent; or that you will obtain a search warrant or search authorization;

(5) Prior to conducting the consent search, if practical under the circumstances, prepare a Permissive Authorization for Search and/or Seizure, enclosure (3), ensuring that all necessary information is complete and accurate;

(6) Advise the person that he or she need not consent to the search;

(7) Ensure that the person signs the Permissive Authorization for Search and/or Seizure (preferably in the presence of someone who will not conduct the search)

(8) A search based upon the consent of the person cannot exceed the limits of the area consented to be searched and the individual conducting the search must be careful not to exceed those limits. However, if personnel are lawfully in a position from which they view an object, if its incriminating character is immediately apparent, and if the personnel have a lawful right of access to the object, they may seize it without a warrant. If, however, the personnel lack probable cause to believe that an object in plain view is contraband without conducting some further search of the object — that is, if its incriminating character is not immediately apparent — the plain-view doctrine cannot justify its seizure;

(9) The individual who consents to the search may withdraw consent at any time during the search or narrow the scope of the search.

d. Searches Incident to a Lawful Apprehension

(1) General Rule. A person who has been lawfully apprehended may be searched.

(2) Search for Weapons and Destructible Evidence. A search may be conducted for weapons or destructible evidence in the area within the immediate control of an apprehended person. The area within the person's "immediate control" is the area which the individual searching could reasonably believe that the person apprehended could reach with a sudden movement to obtain such

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property. However, the passenger compartment of an automobile, and containers within the passenger compartment, may be searched as a contemporaneous incident of the apprehension of an occupant of the automobile, regardless of whether the person apprehended has been removed from the vehicle.

(3) Examination for Other Persons. When an apprehension takes place at a location in which other persons reasonably might be present who could interfere with the apprehension or endanger those apprehending, a reasonable examination may be made of the general area in which such other persons might be located.

e. Emergency Searches to Save Life or for Related Purposes. In emergency circumstances to save a life or for a related purpose, a search may be conducted of persons or property in a good faith effort to render immediate medical aid, to obtain information that will assist in the rendering of such aid, or to prevent immediate or ongoing personal injury.

f. Searches of Open Fields or Woodlands. A search of open fields or woodlands is permissible.

g. Abandoned Property. Abandoned property may be searched and seized by any person without probable cause and without a search authorization.

## 7. Conduct of the Search

a. If there is a search authorization and the person whose property is to be searched is present, the person conducting the search should, where possible, first attempt to obtain consent from that person to search in accordance with paragraph 7c above.

b. After it has been determined that the person is unwilling to consent, the person conducting the search should, when possible, notify that person of the search authorization and its general substance. Such notice may be made prior to or contemporaneously with the search.

c. Personnel authorized to conduct the search shall search only the person and/or area designated. If in the course of the search, facts and circumstances indicate that the scope of the search should be extended, they shall immediately inform the authorizing officer of such facts and circumstances for further instructions. However, if

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personnel are lawfully in a position from which they view an object, if its incriminating character is immediately apparent, and if the personnel have a lawful right of access to the object, they may seize it without an authorization. If, however, the personnel lack probable cause to believe that an object in plain view is contraband without conducting some further search of the object — that is, if its incriminating character is not immediately apparent — the plain-view doctrine cannot justify its seizure.

d. Personnel conducting a properly authorized search will seize all items set forth in the authorization and those items which are in plain view and are:

(1) Fruits or products of any offense against the Uniform Code of Military Justice;

(2) Instrumentalities used in the commission of the offense or which could be used to effect an escape;

(3) Any other evidence of the commission of the offense or the identity of the offender; or,

(4) Contraband.

e. An inventory of the property seized shall be made at the time of a seizure or as soon as practicable thereafter.

f. All authorizing officers who obtain possession of seized property shall ensure that the property is properly tagged or marked and physically secured in a space not subject to unauthorized access. The authorizing officer should verbally report the circumstances of the search to the commanding officer at the earliest practicable time and submit the written authorization form mentioned above.


8. Staff Judge Advocate Advice. Commanding officers, officers-in-charge, other authorizing officers, and any other persons who have questions concerning searches and seizures may contact the Office of the Staff Judge Advocate for advice and assistance. During working hours, the telephone number is 830-6782/6783. After working hours, consult the Combat Center Command Duty Officer who will locate an appropriate attorney for consultation.



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9. Action. All commands will ensure that searches and seizures conducted aboard the Combat Center will be done so in accordance with this Order.

10. Reserve Applicability. This Order is applicable to the Marine Corps Reserve.

  
D. T. LENNOX  
Chief of Staff

DISTRIBUTION: A-1 plus SJA (50)

**REQUEST/AFFIDAVIT FOR COMMAND AUTHORIZATION FOR  
SEARCH AND/OR SEIZURE**

**UNITED STATES  
VS.**

(Rank and Name of Person

1. **Before the,** (Identify person to grant authorization by title and command

2. **The undersigned, being duly sworn, requests authority to search:**  
(Identify the person and/or describe the premises with particularity and in detail.)  
(See instruction 1)

3. **Believing that there is now being concealed certain property,**  
namely:

(Here describe the property)  
(See Instruction 2)

4. **The request for authorization to search and seize is made in**  
connection with an investigation into the offense(s) of: (See  
instruction 3)

5. The facts and circumstances known to me tending to establish the  
foregoing grounds for authorization to search and seize, including  
comments demonstrating the reliability of the information and/or  
informant, are as follows:

(Attach separate, sworn affidavit if more space is needed.)  
(See instruction 3)

**(Signature)**

Sworn to before me, and subscribed in my presence, this                      day  
of                      1999

(Signature of Person Administering  
**Oath)**

(Rank, Service, and Title)

ENCLOSURE (1)

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INSTRUCTIONS

1. In paragraph 2, the person, premises, or place to be searched should be described with particularity and in detail.
2. In paragraph 3, the property to be seized should be described with particularity and detail. The types of items which may be seized are set forth in paragraph 7d. If the item is something likely to be disassembled into parts, include such information and request authorization to seize the parts.
3. In paragraph 4, set forth a concise factual statement of the offense that has been committed or the probable cause to believe that it has been committed. Use additional pages if necessary.
4. In paragraph 5, set forth facts establishing probable cause for believing that the person, premises, or place to be searched and the property to be seized are connected with the offense mentioned in paragraph 4, plus facts establishing probable cause to believe that the property to be seized is presently located on the person, premises, or place to be searched. Underlying circumstances that support that the hearsay information is trustworthy should also be included. If the information is based on personal knowledge, the request should so indicate. If the information is based on hearsay information, paragraph 5 should set forth some of the underlying circumstances showing that the informant, whose identity need not be disclosed, or his information, was trustworthy. Use additional pages if necessary.

ENCLOSURE (1)

COMMAND AUTHORIZATION FOR SEARCH AND/OR SEIZURE

UNITED STATES  
VS.

To *(Person to conduct the search/seizure, rank and name)*

Affidavit(s) having been made before me by

*(Identify persons providing information regarding request for authorization.)*

*(See instruction 1)*

That there is reason to believe that on the person of and/or the premises known as:

*(Identify the person and/or describe the premises with particularity and in detail)*

*(See instruction 2)*

which is/are under my jurisdiction,

There is now being concealed certain property, namely:

*(Describe the property)*

*(See instruction 3)*

I am satisfied that there is probable cause to believe that the property so described is being concealed on the person and/or premises above described and that grounds for application for issuance of a command authorized search exist as stated in the supporting affidavit(s). *(See instruction 4)*

YOU ARE HEREBY AUTHORIZED TO SEARCH the person and/or place named for the property specified and if the property is found there to seize it, leaving a copy of this authorization and receipt for the property taken. You will provide a signed receipt to this command, containing a full description of every item seized.

ENCLOSURE (2)

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Any assistance desired in conducting this search will be furnished by  
this command.

Dated this        day of        199

the search) (Signature of person authorizing

(Rank, Service, Title)

(Command)

ENCLOSURE (2)

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## INSTRUCTIONS

1. Although the person bringing the information to the attention of the individual empowered to authorize the search will normally be one in the execution of investigative or police duties, such need not be the case. The information may come from one as a private individual.
2. The area or place to be searched must be specific, such as wall locker, wall locker and locker box, residence, or automobile.
3. A search may be authorized only for the seizure of certain classes of items:
  - a. Fruits of a crime (the results of a crime such as stolen objects)
  - b. Instrumentalities of a crime (example: search of an automobile for a crowbar used to force entrance into a building which was burglarized)
  - c. Contraband (items, the mere possession of which is against the law — marijuana, etc.);
  - d. Evidence of crime (example: bloodstained clothing of an assault suspect)
4. Before authorizing a search, probable cause must exist. This means reliable information that would lead a reasonably prudent and cautious man to a natural belief that:
  - a. An offense probably is about to be, is being, or has been committed; and,
  - b. Specific fruits or instrumentalities of the crime, contraband or evidence of the crime exist; and,
  - c. Such fruits, instrumentalities of the crime, contraband or evidence are probably in a certain place.
5. In arriving at the above determination, it is generally permissible to rely on hearsay information, particularly if it is reasonably corroborated or has been verified in some substantial part by other facts or circumstances.

ENCLOSURE (2)

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However, unreliable hearsay cannot alone constitute probable cause. The mere opinion of another that probable cause exists is not sufficient; however, along with the pertinent facts, it may be considered in reaching the conclusion as to whether or not probable cause exists.

If the information available does not satisfy the foregoing, additional investigation to produce the necessary information may be ordered.

ENCLOSURE (2)

## PERMISSIVE AUTHORIZATION FOR SEARCH AND/OR SEIZURE

1. Advisory

a. I, (Full Name off person giving consent) , after being advised by (Person requesting permission to search)

b. That (Organization conducting investigation) is conducting an investigation into the offense(s) of  
(list suspected offenses here)

have been requested to permit a search of my (describe property or premises to which person has consented to be searched.)

2. Constitutional Right

I have been informed of my constitutional right to refuse to permit this search in the absence of a search warrant or search authorization. In full understanding of this right, I have nevertheless decided to permit this search to be made.

3. Permission

This search may be conducted on (date) by (name of person(s conducting search)) and I hereby give him/her/them my permission to remove and retain any property or papers found during the search which are desired for investigative purposes.

4. Free Decision

I make this decision freely and voluntarily and it is made with no threats having been made or promises extended to me.

(Date signed) (Signature of person consenting)

5. Witnesses

(Signature of Witness) (Signature of  
Witness)

ENCLOSURE (3)



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2. Times of Search

Start (Start Time off Search

<sup>y</sup>  
End (End Time of Search

ENCLOSURE (3)